
TITLE 329 SOLID WASTE MANAGEMENT BOARD

**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-7](#) AND DRAFT RULE
LSA Document #08-212****DEVELOPMENT OF NEW RULES CONCERNING THE RCRA STANDARDIZED PERMIT****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for a new rule to incorporate by reference new federal regulations for RCRA (Resource Conservation and Recovery Act) standardized hazardous waste permits. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations and any other provisions of Title 329 that may be affected by this rulemaking.

CITATIONS AFFECTED: [329 IAC 3.1-11.5](#); [329 IAC 3.1-13-18](#); [329 IAC 3.1-13-19](#); [329 IAC 3.1-13-21](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-14-9-7](#); [IC 13-22-2-4](#).

STATUTORY REQUIREMENTS

[IC 13-14-9-7](#) recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods and public hearings routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the notice of first comment period would provide no substantial benefit, IDEM may forgo the first comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by [IC 13-14-9-7](#), the commissioner shall prepare written findings and include those findings in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to [IC 13-14-9-7](#).

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under ([IC 13-14-9-3](#))... would provide no substantial benefit to:

- (1) the environment; or
- (2) persons to be regulated or otherwise affected by the proposed rule."

BACKGROUND

This rulemaking would adopt the standardized permit provisions for RCRA hazardous waste management facilities published in the Federal Register on September 8, 2005 (70 FR 53420 et seq.). The standardized permit will streamline the RCRA permitting process and provide regulatory relief to eligible hazardous waste management facilities that take advantage of these provisions. The federal standardized permit rule added a new 40 CFR Part 267 to the hazardous waste program. This action will add a new [329 IAC 3.1-11.5](#) to incorporate that rule by reference. This action will also amend [329 IAC 3.1-13-18](#) and [329 IAC 3.1-13-19](#) to adopt changes to the hazardous waste permitting rules to be consistent with 40 CFR Part 124 and add a new [329 IAC 3.1-13-21](#) to incorporate 40 CFR 124, Subpart G by reference. This will make the RCRA standardized permit available to eligible hazardous waste management facilities in Indiana. Other provisions of the RCRA standardized permit rule in 40 CFR 260, 40 CFR 261, and 40 CFR 270 were adopted by the Solid Waste Management Board in the 2006 Hazardous Waste Annual Update.

This rulemaking uses the abbreviated rulemaking process in [IC 13-14-9-7](#) because the proposed rule is an incorporation by reference of a federal regulation that will be applicable to Indiana and contains no amendments that have a substantive effect on the scope or intended application of the federal rule.

[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. This draft rule imposes no restrictions or requirements because it is a direct adoption of federal requirements that are applicable to Indiana and contains no amendments that have a substantive effect on the scope or application of the federal rule.

Potential Fiscal Impact

EPA estimates the potential nationwide annual regulatory relief to eligible facilities from this rule at \$10,000,000 to \$12,300,000 per year. Considering the Indiana economy to be 2% of the national economy, the annual cost savings would be \$200,000 to \$246,000 per year for regulated entities in Indiana. The potential fiscal impact (cost savings) of this rule is not anticipated to exceed \$500,000 per year to the regulated entities.

Public Participation and Workgroup Information

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Steve Mojonier in the Office of Land Quality at (317) 233-1655 or (800) 451-6027 (in Indiana).

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

www.in.gov/idem/compliance/ctap/index.html

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Stacey Pfeffer

IDEM Compliance and Technical Assistance Program - OPPTA

MC 60-04 IGCS W-041

100 North Senate Avenue

Indianapolis, IN 46204-2251

(317) 232-8172 or (800) 988-7901

ctap@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Megan Tretter

IDEM Small Business Assistance Program Ombudsman

MC 50-01 IGCN 1307

100 North Senate Avenue

Indianapolis, IN 46204-2251

(317) 234-3386

mtretter@idem.in.gov

FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking on new rules incorporating federal standards for RCRA standardized permits as required by federal rule. These findings are prepared under [IC 13-14-9-7](#) and are as follows:

- (1) This rule is the direct adoption of federal requirements that are applicable to Indiana, and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.
- (2) Indiana is required by federal law to adopt hazardous waste management regulations as established by the United States Environmental Protection Agency.
- (3) The public will benefit from prompt adoption of this rule, because it will provide regulatory relief to eligible RCRA hazardous waste management facilities.
- (4) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.
- (5) The draft rule is hereby incorporated into these findings.

Thomas W. Easterly

Commissioner

Indiana Department of Environmental Management

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the rule. Mailed comments should be addressed to:

#08-212 (SWMB) (RCRA Standardized Permit)

Attn: Marjorie Samuel Mail Code 65-45

Office of Land Quality

Indiana Department of Environmental Management

100 North Senate Avenue

Indianapolis, Indiana 46204-2251

Hand delivered comments will be accepted by the receptionist on duty at the eleventh floor east, reception desk, Office of Land Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-3403, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules, Planning and Outreach Section at (317) 233-1655 or (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by May 2, 2008.

Additional information regarding this action may be obtained from Steve Mojonnier in the Office of Land Quality, (317) 233-1655 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [329 IAC 3.1-11.5](#) IS ADDED TO READ AS FOLLOWS:

Rule 11.5. Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standardized Permit (40 CFR 267)

[329 IAC 3.1-11.5-1](#) Adoption of federal standards for owners and operators of hazardous waste facilities operating under a standardized permit

Authority: [IC 4-22-2-21](#); [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-22-2](#); 40 CFR 267

Sec. 1. Except as provided otherwise in section 2 of this rule, 40 CFR 267 is incorporated by reference.
(Solid Waste Management Board; [329 IAC 3.1-11.5-1](#))

[329 IAC 3.1-11.5-2](#) Exceptions and additions to 40 CFR 267

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-14-10](#); [IC 13-22-2](#); [IC 13-22-4-3.1](#); [IC 13-30-3](#); 40 CFR 267

Sec. 2. Exceptions and additions to federal standards for owners and operators of hazardous waste facilities operating under a standardized permit are as follows:

- (1) In 40 CFR 267.3, dealing with imminent hazard action, delete "section 7003 of RCRA" and insert "[IC 13-30-3](#) and [IC 13-14-10](#)".
- (2) Reports to the state required at 40 CFR 267.56 must be communicated immediately to the Indiana Department of Environmental Management, Office of Land Quality, 100 North Senate Avenue, MC 66-30, Indianapolis, Indiana 46204-2251, (317) 233-7745, or (888) 233-7745 (toll free in Indiana).
- (3) In addition to the report of a release, fire, or explosion from the facility required by 40 CFR 267.56(c), the permittee shall comply with all requirements for spill reporting contained in the rules of the water pollution control board at [327 IAC 2-6.1](#).
- (4) In 40 CFR 267.75(a), dealing with the biennial report, delete "EPA form 8700-13B" and insert "a form provided by the commissioner".
- (5) In addition to the requirements in 40 CFR 267, Subpart E, copies of the reports required by [IC 13-22-4-3.1](#) must be kept on file for at least three (3) years after submission to the department.
- (6) Delete 40 CFR 267, Subpart H dealing with financial requirements and substitute [329 IAC 3.1-15](#).
- (7) The exceptions and additions to the standards for tank systems in 40 CFR 264, Subpart J, found in [329 IAC 3.1-9-3](#), also apply to tank systems under 40 CFR 267, Subpart J if the tank systems were permitted under 40 CFR 264, Subpart J before the effective date of this rule.

(Solid Waste Management Board; [329 IAC 3.1-11.5-2](#))

SECTION 2. [329 IAC 3.1-13-18](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-13-18](#) Preapplication public meeting and notice

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-22-2](#); 40 CFR 124.31

Sec. 18. (a) This section applies to the following:

(1) All RCRA Part B applications seeking initial permits for hazardous waste management units over which the department has permit issuance authority.

(2) RCRA Part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations.

(3) Hazardous waste management facilities for which facility owners or operators are seeking coverage under a RCRA standardized permit under 40 CFR 270, Subpart J, including renewal of a standardized permit for such units, where the renewal is proposing a:

(A) significant change in facility operations;

(B) change that is not specifically identified in 40 CFR 270.42; or

(C) change that amends any terms or conditions in the supplemental portion of the standardized permit.

(b) This section does not apply to the following:

(1) **Class 1 and 2** permit modifications under 40 CFR 270.42.

(2) Applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(c) As used in this section, "significant change" means any change that would qualify as a Class 3 permit modification under 40 CFR 270.42.

(d) Prior to the submission of a Part B RCRA permit application for a facility **or the submission of a written notice of intent to be covered by a RCRA standardized permit under 40 CFR 270, Subpart J**, the applicant shall:

(1) hold at least one (1) meeting with the public in order to:

(A) solicit questions and comments from the community and interested parties; and

(B) inform the community and interested parties of proposed hazardous waste management activities; and

(2) post a sign-in sheet or otherwise provide a voluntary opportunity for attendees and interested parties to provide their names and addresses.

(e) The applicant shall submit the following to the department as a part of the Part B application in accordance with 40 CFR 270.14(b) **or with the written notice of intent to be covered by a RCRA standardized permit under 40 CFR 270, Subpart J:**

(1) A summary of the meeting.

(2) The list of attendees and their addresses developed under subsection (d).

(3) Copies of any written comments or materials submitted at the meeting.

(f) The applicant shall **do the following:**

(1) Provide public notice of the preapplication meeting at least thirty (30) days prior to the meeting. ~~The applicant shall~~

(2) Maintain, and provide to the department upon request, documentation of the public notice required under subsection (g).

(g) The applicant shall provide public notice in all of the following forms:

(1) A newspaper advertisement. The applicant shall publish a notice, fulfilling the requirements in subsection (h), in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the commissioner shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the commissioner determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement.

(2) A visible and accessible sign. The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in subsection (h). If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site.

(3) A broadcast media announcement. The applicant shall broadcast a notice, fulfilling the requirements in subsection (h), at least once on at least one (1) local radio station or television station. The applicant may employ another medium with prior approval of the commissioner.

(4) A notice to the department. The applicant shall send a copy of the newspaper notice to the department and to the appropriate units of state and local government, in accordance with section 10(c)(1)(F) of this rule.

(h) The notices required under subsection (g) must include the following:

- (1) The date, time, and location of the meeting.
- (2) A brief description of the purpose of the meeting.
- (3) A brief description of the facility and proposed operations, including the address or a map, for example, a sketched or copied street map, of the facility location.
- (4) A statement encouraging people to contact the applicant at least seventy-two (72) hours before the meeting if they need special access to participate in the meeting.
- (5) The name, address, and telephone number of a contact person for the applicant.

(Solid Waste Management Board; [329 IAC 3.1-13-18](#); filed Jan 9, 1997, 4:00 p.m.: 20 IR 1114; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 3. [329 IAC 3.1-13-19](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-13-19](#) Public notice requirements at the application stage

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-22-2](#); 40 CFR 124.32

Sec. 19. (a) This section applies to the following:

- (1) All RCRA Part B applications seeking initial permits for hazardous waste management units over which the department has permit issuance authority.
- (2) RCRA Part B applications seeking renewal of permits for such units under 40 CFR 270.51.

(b) This section does not apply to the following:

- (1) Permit modifications under 40 CFR 270.42.
- (2) Applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(3) Hazardous waste units for which facility owners or operators are seeking coverage under a RCRA standardized permit issued under 40 CFR 270, Subpart J.

(c) Requirements for notification at application submittal shall be as follows:

(1) The commissioner shall provide public notice as set forth in section 10(c)(1)(D) of this rule, and notice to appropriate units of state and local government as set forth in section 10(c)(1)(F) of this rule, that a Part B permit application has been submitted to the department and is available for review.

(2) The notice shall be published within a reasonable period of time after the application is received by the commissioner. The notice must include the following:

- (A) The name and telephone number of the applicant's contact person.
- (B) The name and telephone number of the department's contact office, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process.
- (C) An address to which interested parties can write in order to be put on the applicant's mailing list.
- (D) The location where copies of the permit application and any supporting documents can be viewed and copied.
- (E) A brief description of the facility and proposed operations, including the address or a map, for example, a sketched or copied street map, of the facility location on the front page of the notice.
- (F) The date that the application was submitted.

(d) Concurrent with the notice required under subsection (c), the commissioner must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the department's office.

(Solid Waste Management Board; [329 IAC 3.1-13-19](#); filed Jan 9, 1997, 4:00 p.m.: 20 IR 1115; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 4. [329 IAC 3.1-13-21](#) IS ADDED TO READ AS FOLLOWS:

[329 IAC 3.1-13-21](#) Procedures for RCRA standardized permit

Authority: [IC 4-22-2-21](#); [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-22-2](#); 40 CFR 124, Subpart G

Sec. 21. 40 CFR 124, Subpart G, consisting of 40 CFR 124.200 through 40 CFR 124.214, revised as of July 1, 2006, is incorporated by reference.

(Solid Waste Management Board; [329 IAC 3.1-13-21](#))

[Notice of Public Hearing](#)

Posted: 04/02/2008 by Legislative Services Agency

An [html](#) version of this document.